IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-759

ALBERTO SANCHEZ, et al

Petitioners,

v.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1, et al,; UNITED STATES OF AMERICA; MARIA MENDOZA, et al., SIDNEY L. SUTTON and SALLY SUTTON, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' REPLY BRIEF

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1. The Notice of Settlement Denied the Class Due Process.

A. Introduction.

The Fisher respondents defend the method of notification on grounds which were not addressed in the petition or the opinion below. These arguments and the principal contention of District No. 1 require a brief rejoinder.

B. The Law of Prejudgment Notice is Inapposite.

Respondents emphasize that notice of pendency is unnecessary in an action certified under Rule 23(b)(2). That, of course, is not the question presented here. If, they add, judgment is properly entered without such prior notice to the class, then a compromise may be approved absent individual notification of the settlement hearing.

The argument ignores the separate and distinct purposes served by Rule 23(c)(2) and (e). As petitioner's own authority

recognizes, notice of pendency is required by Rule 23(c)(2) in order that class members may exercise their right to withdraw from an action certified under 23(b)(3). Since the right to "opt out" is not enjoyed by members of a (b)(2) class, the notice requirement is limited accordingly.

The notice provisions of Rule 23(e) govern the dismissal or compromise of every action, however certified. The difference reflects the essential fact that settlement of class litigation, whatever its character, finally disposes of all substantive interests before the trial court. Respondents' attempt to defend published notice of settlement in a (b)(2) action on the ground that judgment could have been entered without the prior, individual notification necessary in a

(b)(2) context[1/] reduces to a non sequitur.

C. The Expense of Individual Notice is Neither Demonstrated nor Relevant.

In respondents' view, petitioners advocate an inflexible rule of notice imposing costs which would discourage settlements in large class actions. Mailed notice, however, need only be sent to those class members whose identity and whereabouts are readily ascertainable. Mullane, 339 U.S. at 318-19. That principle is neither inflexible in its application nor unduly burdensome. Here, the District routinely mailed material, other than the settlement notice, to all parents whose children attended its schools. The membership of the Mendoza and Fisher

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1/ The members of a (b)(3) class do not receive any prior notice, other than that required by Rule 23(c)(2), where final judgment is entered after trial.

classes totaled approximately 20,000 persons, a figure which appears modest for present purposes. Compare Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) (individual opt-out notices required even though class included more than two million persons).

In any event, Mullane disposes of respondents' contention: Due process does not invariably require the expense of identifying or locating unknown persons so that they may receive individual notice of a proceeding in which they are interested. 339 U.S. at 317-18. As to those whose names and addresses are readily available, "however, notice by publication stands on a different footing".

> "Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties." 339 U.S. at 319.

This Court then imposed the requirement of mailed notice which respondents find so onerous.

D. Respondents Have Otherwise Failed to Justify Mailed Notice of Settlement.

Respondents suggest that published notice of settlement suffices where the class is adequately represented prior to the settlement hearing. This Court has squarely rejected their reasoning:

> "Petitioner further contends that adequate representation, rather than notice, is the touchstone of due process in a class action and therefore satisfies Rule 23. We think this view has little to commend it." Eisen III, 417 U.S. at 176.

That conclusion is particularly apt here. Notice of settlement and a fairness hearing are designed to ensure that class members may scrutinize and, where appropriate, object to counsel's representation of their interests. Pettway v. American Cast Iron Pipe Co., 576 F.2d 1157, 1169

(1978).

Respondents also note that class members appeared at the settlement hearing and informed the trial court of "common" objections to the parties' agreement. It does not follow that the notice provided here satisfied due process. In Mullane, this Court recognized that any objections to the accounting would necessarily be brought on behalf of all persons whose interests were before the trial judge. For that very reason, individual notice mailed to known beneficiaries was sufficient. As the Court empahsized, however, due process permitted no less. 339 U.S. 306.

Furthermore, respondents' contention ignores the disparate impact of the settlement. The compromise provided that certain schools would be closed immediately, the future of others reviewed and determined at a later date, and the balance

used subject to student transfers. Similarly, seven of the eight counts in the Mendoza Complaint were dismissed with prejudice, a proviso which did not concern black parents or their children. Given the diverse interests affected by the agreement, a discrete set of class-wide objections was never at issue. Mailed notice, on the other hand, was essential if only because the settlement did not have the same impact on the classes as a whole or their individual members.[2/]

2/ Respondents' argument implies that objectors appearing before the trial court somehow "represent" absent class members, a contention which is without support in fact or law. Because sufficient, timely notice of the settlement hearing was not provided, it certainly does not follow that all objections to the compromise were presented, much less developed, at the final hearing.

The District correctly observes that it mailed a newsletter dealing with the hearing on August 8 and 9 to all class members. Suffice it to note that the settlement encompassed the plan, which was the sole subject of that hearing, and an agreement on all other outstanding issues, including appeal rights, dismissal of quality education counts, attorneys' fees and provisions benefiting black children. Mailed notice of the first proceeding did not and could not constitute adequate notice of the settlement hearing itself.

2. Intervening Events did not "Moot" the Quality Education Counts.

According to respondents, the notice of settlement properly omitted reference to the provision dismissing the quality

education counts with prejudice.[3/] "Intervening events", which respondents fail to describe, rendered them "moot". The subject matter of certain counts was investigated by HEW officials, who found various remedial measures necessary. Counsel for the Mendoza class subsequently sought a stay of further proceedings in order that HEW might monitor the District's compliance with its requirements.

In doing so, counsel emphasized that the agency's action did not preclude litigation of the same issues. As HEW's own expert testified, the administrative

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3/ Their assertion that these claims were mere "make weights" included to bolster allegations of de jure segregagation are, of course, absurd. If, as respondents suggest, the dismissal set forth in the settlement was an irrelevant formality, they might at least note that the District Court had previously entered orders dismissing the counts without any notice to the class, a procedure which Rule 23(e) alone expressly prohibits.

compliance plan would provide a sufficient remedy only if the District implemented it fully. The United States did not adduce evidence at the settlement hearing with respect to the District's performance or its monitoring efforts. The dismissed counts also included claims which were not addressed by the compliance plan. In short, the quality education issues were anything but moot at the time of settlement.

3. Respondents have not Presented Meritorius Argument on the Simultaneous Negotiation of Fees and Class Interests.

A. Respondents' Entitlement to and the Amount of Fees Received are Irrelevant.

Respondents defend combined negotiations on the theory that federal law authorized a fee award here. The argument ignores the obvious: Where a class action seeks injunctive relief only, a settlement including attorney's fees simply could not

be negotiated unless it resolved some independent claim created by statute. Whether that resolution may be reached at the same time class interests are determined is the question presented.

The amount of the total award is equally immaterial for present purposes. As the cases on point have emphasized, the risk that class interests will be traded for fees inheres in simultaneous negotiations. Indeed, plaintiffs' counsel and the defendants are the sole beneficiaries of the practice. A rough relationship between the fee award recovered in the settlement and the amount which may have been due class counsel does not establish that they represented their clients' interests without the slightest regard for their personal gain. Adequate representation at the settlement stage and the Code of Professional Responsibility alike demand no less.

B. The Origins and Course of the Negotiations are Immaterial.

Respondents stress that the District, not class counsel, insisted on negotiating fees together with all other outstanding issues. Fisher adds that his lawyers sought to remove fees from the bargaining and that they were determined after all substantive matters were resolved.

Counsels' correspondence conclusively demonstrates that fees were a subject of bargaining from the very outset; only the final amount was decided at the conclusion of the process (Petitioner's Appendix Q, R, S, T & U, p. 189 to 240). It is that very procedure which the Circuits have repeatedly condemned. The attempt of Fisher's counsel to divorce fees from the negotiations was predictably rejected by the District. Since, as respondents now admit, a settlement might well have been

impossible without agreement on fees, [4/] plaintiffs' attorneys did not pursue the matter.

If as respondents claim, the District insisted on combined negotiations, it surely does not follow that all real or potential improprieties were eliminated from the bargaining process. The District's strategy ensured that it would retain an ongoing and substantial advantage over plaintiffs' attorneys, who were necessarily forced to choose between maximizing their personal gain and the benefits received by the class.

4/ That fact alone confirms the impropriety of combined negotiations. Resolution of issues affecting class interests should not depend on whether agreement can be reached on the amount due plaintiff's counsel. See Respondent Fisher's Brief in Opposition, p. 31 and 32.

4. Seriatum Approval of Desegregation Plan Negotiated as Part of the Class Action Settlement is Improper.

Respondents defend seriatum approval of the desegregation plan by asserting that petitioners either misunderstood or misstated the facts leading up to the approval of the plan and its relationship to the stipulation of settlement. Respondent Mendoza states that the "plaintiffs did not agree in advance to the closures;" (p. 3 of Mendoza's response); Respondent District states that "the record clearly demonstrates that the plan was separate from the settlement. . ." (p. 39 of District's response). None of the answering respondents have addressed the issue raised in the petition.[5/] Armstrong v. Board of Directors, etc., 616 F.2d 305 (7th Cir. 1980): If a remedial

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5/ Petitioners have not received a Brief in Opposition from the United States.

desegregation plan is negotiated as part of a settlement, may it be considered separately from the other provisions of the settlement? Crucial to that question is whether or not the desegregation plan was, in fact, part of the stipulation of settlement, both in form and content. Respondents urge it was not. Petitioners disagree. Petitioners support their position with the following undisputed facts.

On July 17, 1978 the District Court ordered the school district to present its plan to the Court by that same date, July 17th. In the same order, plaintiffs were given until August 2, 1978 to file any objections to or alternative plans and the hearing on the plan, objections thereto or alternatives was to be held on August 8, 1978, (Petitioner's Appendix C, p. 65-71). On August 4, 1978, the respondent District filed its "Report of All Defendants Other

Than Anita Lohr" stating as follows:

> "Pursuant to Order of this Court entered July 18, 1978, defendants submit this report to inform the Court of the activities of and proceedings before the school board since the defendants' plan was submitted on July 17, 1978. Additionally, as the Court has been informally notified by letter dated August 2, 1978, the defendants have reached a settlement of all issues with plaintiffs Fisher, et al., plaintiffs Mendoza, et al., and plaintiff-intervenor, subject to the provisions of Rule of Federal Procedure No. 23 and approval of the Court.
>
> One of the provisions of the settlement agreement is that, with respect to the Roosevelt, University Heights, Jefferson Park and Cragin group of schools, Option III as it is included within the materials submitted to the Court on July 17, 1978 would be agreed upon by the parties for the Court's approval. This option is different from the one (Option II) which was adopted by the school board as its preferred option for this group of schools. Other than that single difference, which is agreed to by the school board only as a part of the settlement, no alterations in the plan as submitted on July

> 17, 1978 is suggested by defendants." (Emphasis added. Petitioner's Appendix M, p. 167-168).

Also on August 4, 1978, the District Court entered the following Order:

> "A proposed settlement having been filed in these consolidated actions, it is necessary that the members of the plaintiffs' classes be given notice of the proposed settlement and an opportunity to object thereto or otherwise be heard thereon." (Petitioner's Appendix C, p. 73).

The District Court then went on to set August 24, 1978 for the hearing on the proposed settlement and ordered counsel to prepare a notice to the class. The District Court was aware before the August 8, 1978 hearing on the desegregation plan that the parties had reached agreement and that the agreement included the plan. The fact that the Court went ahead with the hearing on the plan and approved it separately from the overall settlement does not change the fact that the plan was

agreed to by the parties as part of the overall settlement. And, as the Ninth Circuit observed, at the hearing on the desegregation plan,

> "The school district presented testimony in support of the plan. Due to the settlement, neither the class representatives nor the government objected or chose to conduct cross examination, but thought to reserve such opportunity should the settlement be disapproved by the Court." 623 F.2d 1338, at 1342 and 1343.

Moreover, all the orders of the District Court concerning the desegregation plan and the settlement clearly reflect the District Court's understanding that the desegregation plan was agreed to by the plaintiffs below as part of the overall compromise (Petitioner's Appendix E, F and I). Nowhere in the record does the District Court indicate otherwise.

The correspondence among the counsel for the parties to the settlement expressly provides that the plan must be agreed to

as part of the compromise (Petitioner's Appendix S, T and U). Respondents offer nothing to controvert the record on this point, nor could they.

The Ninth Circuit has, therefore, condoned a procedure which permits class counsel to negotiate a remedial plan as part of an overall settlement, stand mute at any hearing held on the propriety of the plan leaving the class unrepresented and without notice of the proceedings. The remaining provisions of the settlement then are considered at a separate hearing. Such a practice offends due process and removes the stewardship of the litigation from the class to their counsel. The lawyers will not be living in the neighborhoods where the schools are closed, where the facilities are shoddy or where the curriculum is inferior. They cannot be trusted to adequately represent the class

unless the class is afforded the due process protection embodied in the processes dictated by Rule 23(e) of the Federal Rules of Civil Procedure. Minority parents and their children should receive the same protection as other litigants, surely not less.

Respectfully submitted this 16 day of January, 1981.

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TUSD News

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An information service for the residents of the Tucson Unified School District

The Desegregation Decision

On June 5, U.S. District Court Judge William Frey ruled that nine of the Tucson Unified School District's 102 schools currently are suffering the effects of past discriminatory acts which violate the U.S. Constitution. The judge further ordered the district to submit a plan to desegregate those schools — to be implemented when school resumes in September.

On July 17, after numerous public forums, the school board submitted a proposed plan which board members feel complies with the judge's order and addresses the individual violations cited in his ruling. The board has until Aug. 4 to make amendments to its proposed plan, and has scheduled a study session for 7:30 p.m. Monday, July 31, at 1010 E. 10th St., to hear more from people involved in the schools affected by the court order.

The judge also has scheduled a hearing in his courtroom at 8:30 a.m. on Tuesday, Aug. 8, for those residents of the Tucson Unified School District who wish to register their objections or to suggest alternatives to the proposed plans in open court. (See story inside for details.)

The plan outlined in this issue of the TUSD News may or may not be the plan which will be implemented when school resumes Sept. 5. Judge Frey has indicated he will rule sometime in mid-August as to whether he will accept or reject the plan or make modifications.

The judge made 22 findings of fact with respect to the district's neighborhood school concept. These findings recognize a relationship between that concept and the district's attempt to dismantle its former dual system in 1951. The judge felt the neighborhood school concept may have been a necessary vehicle for dismantlement and for ensuring that the effects of a formal dual system did not continue.

In responding to the judge's ruling of Constitutional violations, the TUSD Board of Education divided the nine named schools into three natural groupings; Brichta, Manzo and Tully; Roosevelt, University Heights, Jefferson Park and Cragin; and Spring and Safford junior highs.

The remedies to be submitted to the court also could be divided into two categories: (1) the necessity to eliminate all vestiges of the past statutory segregation flowing from the existence of Dunbar (a former all-Black school) and (2) the duty to remedy any present effects of past segregative acts.

These present effects could be measured only by comparing what the racial or ethnic composition of a school would have been if segregative acts had not occurred.

(Continued inside)

and its effect on the Tucson Unified School District

District proposal would shift students from Brichta Elementary

In summary, all vestiges of Dunbar must be eliminated, whereas the present effects of segregation in the other schools must be cured by creating a racial or ethnic composition in the schools as if the segregative acts had not occurred.

In the Brichta, Manzo and Tully area, the judge ruled that these schools currently are experiencing effects of past discriminatory acts. The acts specifically identified by the court were (1) the timing of Brichta's original construction, (2) the drawing of Brichta's original attendance boundaries, (3) the adding of four permanent classrooms to Brichta in 1964 and (4) placing portables at Brichta in 1972 rather than using space at Tully to relieve Brichta's overcrowding.

Brichta currently is an ethnically balanced school, in terms of districtwide ratios. But this means Brichta has an Anglo majority in a geographical area of the district where most students are Mexican-American.

The judge suggested that if the discriminatory acts had not occurred, Brichta's ethnic composition would more nearly reflect its immediate geographic vicinity, and Manzo and Tully would have enrolled more Anglo students. The judge suggested, however, that students from outside these two immediate neighborhoods should have been assigned to Manzo and Tully, and did not imply that the district had caused the integral neighborhoods to be predominantly Mexican-American.

Also, both the Manzo and Tully neighborhoods meet the criteria established for neighborhood school attendance. That is, both schools are situated in the midst of a residential area defined by major thoroughfares and natural barriers within which students are able to walk to school.

The plan submitted to the court by the TUSD school board includes these considerations. The Manzo and Tully neighborhoods would not be altered by any boundary changes. Tully School would add that portion of the Brichta attendance area bounded by Ironwood Hills (Grant), Silverbell, Camino de Oeste and Goret, and the Manzo School would add that portion of the Brichta attendance area bounded by Greasewood, Speedway, Trail's End, Camino de Oeste and Ironwood Hills (Grant).

If Brichta students had been assigned to Manzo and Tully in the past, such an assignment probably would have taken place, with more students assigned to Tully than Manzo because of space considerations.

This plan would reduce Brichta to its immediate walk-in neighborhood plus Silverbell Terrace, a predominantly minority area. This also would remove the portables from Brichta which were part of the constitutional violation.

The students in the areas formerly designated as being assigned to Brichta would be reassigned to both Tully and Manzo schools, resulting in all three schools more closely meeting the student ethnic percentages in that geographic area of the district.

All children currently walking to Brichta, Manzo and Tully would continue to do so. Those children changing schools already are being transported, so additional student transportation would not be required. The distance traveled for the transported youngsters would increase slightly.

This plan would assign approximately 84 more Anglo children to Tully and about 54 more Anglo children to Manzo. The continuity of educational programs would not be affected and little staff assignment adjustment would be required.

This special summer edition of the TUSD News is being mailed to all families with children attending TUSD schools, in compliance with the judge's directions to inform the residents of the contents of the proposed plan.

Any questions about the plan or the judge's order may be directed to the office of Dr. Lee Starr, Assistant Superintendent for Community Relations, 791-6121.

More details on the desegregation issue will be included in the first regular issue of the 1978–79 TUSD News, scheduled for publication in mid-September.

Tully boundaries remain the same; add to Tully that portion of the Brichta attendance area bounded by Ironwood Hills (Grant), Silverbell, Camino de Oeste and Goret.

Manzo boundaries remain the same; add to Manzo that portion of the Brichta attendance area bounded by Greasewood, Speedway, Trail's End, Camino de Oeste and Ironwood Hills (Grant).

La propuesta del distrito transportará alumnos de la Escuela Primaria Brichta

El 5 de junio del corriente, el Juez William Frey de la Corte Federal por este Distrito determinó que nueve de las 102 escuelas del Distrito Escolar Unificado de Tucsón actualmente estaban sufriendo los efectos de actos discriminatorios anteriores realizados en desacuerdo con la Constitución de los Estados Unidos. Por consiguiente el juez dió orden que el distrito escolar presentará un plan para desegregar a las escuelas afectadas, el cual se realizara al resumirse la sesión escolar en septiembre.

El 17 de julio, después de numerosos foros públicos, el Consejo Regente Escolar presentó un plan que, a creencia de los integrantes del Consejo, conformara con la orden del juez y se dirigiera a las violaciones citadas en su dictamen. Al Consejo Escolar se le ha dado hasta el 4 de agosto para enmendar el plan propuesto y, de acuerdo con dicho plazo, ha fijado una sesión de estudio para el lunes, 31 de julio, a las 7:30 p.m., en el edificio administrativo, 1010 al este de la Calle 10, con el fin de más ampliamente escuchar los intereses de la gente involucrada en las escuelas afectadas por la orden de la corte.

El juez además ha fijado una audiencia en su corte a las 8:30 a.m., el martes 8 de agosto para darles oído a esos residentes del Distrito Escolar Unificado de Tucsón que quieran patentizar sus objeciones o proponer alternativas a los planes propuestos en sesión abierta de la corte. (Entérense de más detalles al respecto en otras secciones de este noticiero.)

No hay seguridad que el plan esquemado en esta edición del Noticiero TUSD sea el que se implementará al empezar las clases el 5 de septiembre. El Juez Frey ha declarado que dará su fallo a mediados de agosto con respecto a la aprobación o rechazo del plan o enmiendas que deban hacerse.

El juez hizo 22 determinaciones con respecto al concepto de la escuela de la vecindad fomentado por el distrito. Estas determinaciones reconocen una relación entre el concepto mencionado y la acción del distrito de "desmantelar apropiadamente" su sistema dual anterior de 1951. El juez reconoció que el concepto de la escuela de la vecindad podría haber sido un medio necesario para desmantelar y asegurar que los efectos de un sistema dual anterior no continuaran.

Al responder al dictamen del juez sobre violaciones constitucionales, el Consejo Regente del TUSD dividió las nueve escuelas nombradas en tres grupos dignos de trato separado: Brichta, Manzo y Tully; Roosevelt, University Heights, Jefferson Park y Cragin; y Spring y Safford.

Los remedios a presentarse a la corte también podrían dividirse en dos clases: (1) la necesidad de eliminar todos los vestigios de segregación estatutaria causados por la existencia de Dunbar (escuela anteriormente negra sólamente) y (2) el deber de remediar los efectos actuales causados por actos segregativos anteriores.

Los efectos actuales pudieran medirse sólamente al considerar cuál hubiera sido la integración racial o étnica de escuela alguna si los actos segregativos no hubieran sucedido.

En resumen, todos los vestigios de Dunbar y sus brazos tienen que eliminarse y mientras tanto los efectos actuales causados por la segregación tienen que ser remediados al establecerse una integración racial o étnica como que no hubieran sucedido actos segregativos.

Con respecto a la área de Brichta, Manzo y Tully, el juez determinó que dichas escuelas actualmente sufren los efectos de actos discriminatorios anteriores. Al respecto, los actos especialmente citados por la corte son los siguientes: (1) el suceso de la construcción original de Brichta cuando ocurrió, (2) la designación de la zona original de asistencia de Brichta, (3) la agregación de cuatro salones de clases permanentes a Brichta en 1964 y (4) la colocación de salones portátiles en Brichta en 1972 en vez de usar el espacio disponible en Tully para aligerar la demasía de alumnos en Brichta.

La escuela Brichta actualmente tiene nivelación étnica con respecto a las razones del distrito entero. Sin embargo esto quere decir que Brichta tiene una mayoría anglosajona en una área geográfica del distrito donde la mayoría de estudiantes son mexicoamericanos.

El juez indicó que si actos discriminatorios no hubieran sucedido, la composición étnica de Brichta se aproximaría más a reflejar su vecindad geográfica contigua o las escuelas Manzo y Tully hubieran matriculado un número mayor de alumnos anglosajones. El juez añadió, sin embargo, que los alumnos de fuera de estas dos vecindades contiguas deberían haber sido asignados a Manzo y Tully pero no implicó que el distrito había causado que las vecindades íntegras fueran mexicoamericanas predominantemente.

Además ambas vecindades de Manzo y Tully conforman los criterios establecidos para asistencia escolar de vecindad, es decir, ambas escuelas están situadas en medio de una área definida por arterias mayores de tránsito y barreras naturales dentro de las cuales los estudiantes pueden caminar a la escuela.

El plan propuesto a la corte por el Consejo del TUSD incluye las siguientes consideraciones. Las vecindades de Manzo y Tully no serían alteradas por cambios de confines. A la escuela Tully se le agregaría esa porción de la área de asistencia de Brichta confinada por la Ironwood Hills (Grant), Silverbell, Camino de Oeste, y Goret, y a la escuela Manzo se le agregaría esa porción de la área de asistencia de Brichta confinada por la Greasewood, Speedway, Trail's End, Camino de Oeste y Ironwood Hills (Grant).

Si se hubieran asignado los estudiantes de Brichta a Manzo y Tully en el pasado, tal asignación probablemente hubiera sucedido asignando más alumnos a Tully que a Manzo en vista de consideraciones de espacio.

Este plan reduciría a Brichta a su vecindad contigua más Silverbell Terrace, una área predominante minoritaria. Esto además causaría la remoción de los salones portátiles de Brichta los cuales formaron parte de la violación constitucional.

Los estudiantes en las áreas anteriormente designadas como pertenecientes a Brichta se reasignarían a ambas escuelas Tully y Manzo causando así que las tres escuelas aproximaran más los porcentajes étnicos estudiantiles en esa área geográfica del distrito.

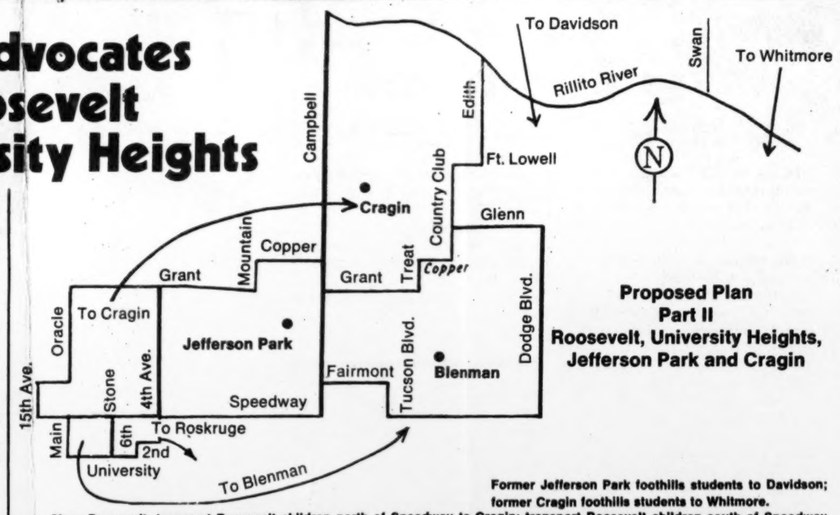
Todos los niños que actualmente caminan a Brichta, Manzo y Tully continuarían a hacerlo. Los niños que cambiarían de escuelas actualmente ya están siendo transportados, de manera que transportación adicional de estudiantes no se requerirá. La distancia recorrida por los niños transportados aumentaría un poco.

Este plan asignaría aproximadamente 84 más niños anglosajones a Tully y 54 más niños anglosajones a Manzo. No sería afectada la continuidad de programas educativos y se requiriría poco adjustamiento en la asignación de personal.

El Consejo Regente Escolar cree que el plan propuesto para estas escuelas conforma con los criterios establecidos por la corte.

	Total Students		Percentage Others		Percentage Minority	
	1977-78	Proposed	1977-78	Proposed	1977-78	Proposed
Elementary						
Blenman	423	500	79.7	74	20.3	26
Brichta	364	175	61	45	39	55
Cragin	537	550	87.3	76	12.7	24
Davidson	370	410	77.6	79	22.4	21
Jefferson Park	218	325	82.6	53	17.4	47
Manzo	472	550	2.3	12	97.7	88
Roskruge	151	175	58.9	57	41.1	43
Tully	376	500	26.6	38	73.4	62
Junior High						
Doolen	611	600	76.6	69	23.4	31
Mansfeld	358	325	48	48	52	52
Maxwell	567	750	47.6	36	52.4	64
Safford	325	350	4.9	5	95.1	95

Proposal advocates closing Roosevelt and University Heights



Proposed Plan
Part II
Roosevelt, University Heights, Jefferson Park and Cragin

Former Jefferson Park foothills students to Davidson; former Cragin foothills students to Whitmore.
Close Roosevelt; transport Roosevelt children north of Speedway to Cragin; transport Roosevelt children south of Speedway and west of Stone to Blenman; assign students east of Stone and south of Speedway to Roskruge.
Close University Heights; reduce Jefferson Park's boundary, assigning children east of Campbell and south of Grant to Blenman; assign all of University Height's attendance area to Jefferson Park; assign Jefferson Park area north of Grant and east of Campbell to Cragin.

In the second school area, affecting Roosevelt, University Heights, Jefferson Park and Cragin, the judge identified Roosevelt and University Heights as vestiges of the former dual system.

The judge said the Black neighborhood which developed around Dunbar between 1912 and 1951 was a neighborhood created by state-mandated segregation. The Black population which surrounded Dunbar spread from the immediate vicinity of Dunbar into the Roosevelt and University Heights attendance areas. The Black residential patterns in these two areas maintain a connection with Dunbar, making them vestiges which must be erased.

Jefferson Park and Cragin were included by the court because of the assignment and transportation to those schools of children living north of the Rillíto River. These children attended Davidson and Whitmore schools, but when these two schools became overcrowded, the foothills students were assigned to the nearest schools then possessing available space—Jefferson Park and Cragin.

However, when Jefferson Park and Cragin became overcrowed, the children north of the Rillito were not assigned to University Heights, the next nearest school with available space. Nor were they reassigned to Davidson and Whitmore when space later became available there. The judge ruled that the present effects of this discriminatory behavior must be cured.

The portion of the plan offered by the district for Roosevelt and University Heights attempts to eliminate the vestiges of Dunbar within the framework of the neighborhood school policy. Both Roosevelt and University Heights would be closed. The Roosevelt neighborhood has suffered in recent years from the encroachment of industry and Pima Community College, with the resulting fragmentation of the neighborhood area. The dispersal of the Roosevelt children among three schools (Roskruge, Blenman and Cragin), all predominantly Anglo in enrollment, would destroy any continuation of the Roosevelt vestige.

The University Heights residential area is still a viable neighborhood, even though it has few school age children. The closure of University Heights, along with merging of its student body with that of Jefferson Park would create a new, integrated neighborhood, generating a school population which utilizes Jefferson Park to its maximum.

Thus, in Jefferson Park, the ethnic ratio would reflect the residential population in the area roughly bounded by Fourth Avenue, Campbell, Grant and Speedway.

In order to accommodate this integrated neighborhood, children formerly attending Jefferson Park and residing east of Campbell and north of Grant would be assigned to Cragin, and children living south of Grant and east of Campbell would be assigned to Blenman. In addition to considerations of classroom space, the assignments would permit these children to attend school without crossing either Grant or Campbell. This plan eliminates the vestiges of Dunbar, with respect to both Roosevelt and University Heights.

The judge did not identify any constitutional violation regarding the Jefferson Park and Cragin neighborhoods, so reassignment of the foothills children north of the Rillito (the former Jefferson Park children to Davidson and the former Cragin children to Whitmore) cannot adversely affect either Cragin or Jefferson Park.

Thus, this aspect of the plan adheres to the policy of conveniently located neighborhood schools as well as returning the pattern of student assignment to what it would have been without the discriminatory actions. The school board feels this plan satisfies the court's order in restoring previous conditions as well as eliminating the Dunbar vestiges.

La propuesta favorece la clausura de Roosevelt y University Heights

En la segunda área escolar que abarca las escuelas Roosevelt, University Heights, Jefferson Park y Cragin, el juez identificó a Roosevelt y University Heights como vestigios del sistema dual anterior.

El juez dijo que la vecindad negra que se había desarrollado alrededor de Dunbar entre 1912 y 1951 fue una vecindad creada por orden del estado. La población negra que circundaba Dunbar se extendió de la vecindad contingua de Dunbar a las áreas de asistencia de Roosevelt y University Heights. Los estilos residenciales negros en estas dos áreas mantienen una conexión con Dunbar haciéndolos vestigios que deben borrarse.

Jefferson Park y Cragin fueron incluidos por la corte debido a la asignación y transportación a esas escuelas de niños que residen al norte del río Rillito. Estos niños asistieron a Davidson y Whitmore pero al atestarse estas escuelas se asignaron a las escuelas más cercanas que tenían cupo para ellos, es decir, Jefferson Park y Cragin.

Sin embargo, cuando Jefferson Park y Cragin se atestaron, los niños del norte del Rillito no fueron asignados a University Heights, entonces la escuela más cercana con cupo. Tampoco fueron reasignados a Davidson y Whitmore cuando hubo cupo después allí. El juez dictó que los efectos actuales del comportamiento discriminatorio deberían ser remediados.

La porción del plan ofrecido por el distrito con respecto a Roosevelt y University Heights trata de eliminar los vestigios de Dunbar dentro del marco del plan de acción de escuelas de vecindad. Ambas Roosevelt y University Heights serían clausuradas, así eliminándose los vestigios de Dunbar. La vecindad de Roosevelt en recientes años ha sufrido de la aproximación de industria y del Colegio Comunitario Pima resultando en una fragmentación de la área vecina. La dispersación de los alumnos de Roosevelt entre tres escuelas (Roskruge, Blenman y Cragin), todas de matriculación anglosajona predominante, destruiría la continuación del vestigio de Roosevelt.

La área residencial de University Heights todavía es una vecindad viable aunque tiene matriculación baja. La clausura de University Heights y la integración de su cuerpo estudiantil con el de Jefferson Park resultaría en una vecindad nueva e integrada así generando una población escolar que utilizaría a Jefferson Park a un grado máximo.

Por consiguiente, la razón étnica en Jefferson Park reflejaría la población residencial en la área confinada por la Avenida 4, Campbell, Grant y Speedway.

Para servir a esta vecindad integrada, los niños que anteriormente asistían a Jefferson Park y con residencia al este de la Campbell y al norte de la Grant serían asignados a Cragin y los niños con residencia al sur de la Grant y al este de la Campbell serían asignados a Blenman. En adición a las consideraciones de espacio de salones, las asignaciones permitirían que los niños asistieran a la escuela sin tener que cruzar ni la Grant ni la Campbell. Este plan elimina los vestigios de Dunbar con respecto a ambas Roosevelt y University Heights.

El juez no citó ninguna violación constitucional con respecto a las vecindades de Jefferson Park y Cragin y, por consiguiente, la reasignación de los niños de las montañas al norte del Rillito (anteriormente niños de Jefferson Park que serían asignados a Davidson y anteriormente niños de Cragin que serían asignados a Whitmore) no puede afectar adversamente a Cragin o Jefferson Park.

De manera que este aspecto del plan concuerda con el plan de acción de localizar escuelas de la vecindad convenientemente y resulta en un regreso al sistema de asignación de estudiantes que hubiera existido sin los actos discriminatorios. El Consejo Regente sostiene que este plan cumple con la orden de la corte al restaurar las condiciones previas y al eliminar los vestigios de Dunbar.

Proposed attendance zones

Tully

Area bounded by Speedway, Grant, Silverbell and the Santa Cruz River.

Area bounded by line even with Goret Road west from the Santa Cruz River to Silverbell, south on Silverbell to Grant (Ironwood Hills), west on Grant to Camino de Oeste, and west on Trail's End Road.

Manzo

Area bounded by Speedway, St. Mary's (Anklam), Silverbell and the Santa Cruz River.

Bounded by Greasewood, Speedway, the district's boundary, Trail's End, Camino de Oeste, and Ironwood Hills (Grant Road).

Brichta

Area bounded by line with Goret Road east to Santa Cruz River, south to Grant, west to Silverbell, south to Speedway, west on Speedway to Greasewood, north to Grant (Ironwood Hills), east to Silverbell, north to Goret Road.

Jefferson Park

Area bounded by Speedway, Campbell, Copper, Mountain, Grant and Fourth Avenue.

Cragin

Area bounded by Grant, Treat, Copper, Country Club, Fort Lowell, Edith, the Rillito River, and Campbell Avenue.

Area bounded by Fourth Avenue, Grant, Oracle Road, 15th Avenue, and Speedway.

Blenman

Area bounded by Dodge Blvd., Glenn, Country Club, Copper, Treat, Grant, Campbell Avenue, Fairmount, Tucson Blvd., and Speedway.

Area bounded by Speedway, Stone, University, and Main.

Roskruge

Area bounded by Speedway, Cherry, Broadway, Southern Pacific Railroad Tracks, and Stone.

Davidson

Area bounded by Flower, Columbus, Rillito River, Swan, the district boundary, Rillito River, Edith, Fort Lowell, Country Club, Glenn, and Dodge.

Whitmore

Area bounded by Grant, Rillito River/Pantano Wash, Rillito River/Tanque Verde Wash, Wilmot (extended), the district boundary, Swan, Rillito River, and Columbus.

Mansfeld

Area bounded by Speedway, Alvernon, 22nd Street, Palo Verde, Layton, Southern Pacific Railroad Tracks and Stone.

Safford

Area bounded by Speedway, Stone, Southern Pacific Railroad Tracks, Silverlake, 6th Avenue, 33rd Street, Freeway (I-10), 22nd Street, and the Santa Cruz River.

Doolen

Area bounded by Craycroft, Rillito River, Columbus, Grant, Swan, Speedway, Santa Cruz River, Grant, Mountain, Copper, and Campbell Avenue.

Maxwell

Area west of the Santa Cruz River which is bounded by the Tucson-Ajo Highway, Mission Road, San Juan, San Jacinto, 22nd Street, and the Santa Cruz River.

Close Spring, former Spring and Safford students north of Speedway and east of Santa Cruz to Doolen; former Spring students south of Speedway and east of Santa Cruz to Safford; former Spring students west of Santa Cruz to Maxwell.
Safford remains open and is designated a magnet and reserve junior high school; Mansfeld and Safford remain open pending construction of new junior high school at an undetermined site; Mansfeld boundaries extended west to Stone and north to Speedway to include part of former Safford area.

District recommends closing Spring

With respect to the two junior high schools identified by the judge, Spring and Safford, it was determined that Spring was a vestige of Dunbar with a continuing stigma as a school not attended by Anglos. The judge ordered all vestiges of Dunbar to be eliminated from the school system.

There were two apparent reasons for the identification of Safford as a school requiring remediation. First, after the closing of Roskruge Junior High in 1972, some Roosevelt graduates were transported to Safford for junior high school. Since Roosevelt was a vestige of Dunbar, these students presumably should have been assigned to a school other than Safford, which already had a substantial Black enrollment.

Secondly, in 1951, the residential area around Dunbar was partitioned among Spring and Safford junior high schools. The Black student population at Safford has remained relatively constant since 1951. The effect at Safford of the state action which caused the Black residential concentration around Dunbar does not appear to have lessened over the years.

By recommending the closing of Spring, the district would remove the last remaining vestige of Dunbar. The assignment of students north of Speedway and east of the Santa Cruz would remove the Roosevelt students from Safford and assign them to Doolen, which the court has suggested should have been done in 1972. This would improve the ethnic balance at Doolen.

Former Spring students west of the Santa Cruz would go to Maxwell Junior High. The former Spring students south of Speedway, east of the Santa Cruz and west of Stone would go to Safford.

Safford would remain open pending the building of a new junior high school to serve the present Safford and Mansfeld attendance areas. No timetable has been submitted for this action. Meanwhile, Safford Junior High will become a reserve and magnet school, which should stabilize its enrollment.

Parents would be intimately involved in the planning and location of the proposed junior high. This proposed action would require the approval of the court.

In all instances, the plan proposed by the district involves meeting its legal obligations with maximum concern for the educational needs of the children affected. The plans have been submitted in the belief that they meet the constitutional mandates ordered by the court.

The judge will make the final decision on all elements of the plan to be implemented this fall.

El juez y consejo escolar sabrán de los padres

El Consejo Regente del Distrito Escolar Unificado de Tucsón ha auspiciado varios foros públicos con el fin de escuchar sugerencias de cómo cumplir con la orden de la corte de desegregar las nueve escuelas señaladas por la corte.

El Consejo seguirá aceptando sugerencias hasta el 4 de agosto, plazo final que se ha dado para presentar cambios al cambio propuesto.

Por consiguiente, el Consejo ha fijado una sesión de estudio para el lunes, 31 de julio, a las 7:30 p.m., en el salón de sesiones ubicado en el edificio administrativo 1010 al este de la Calle 10. El fin de dicha sesión será de permitir a las personas interesadas en las escuelas afectadas por la orden de la corte que "presentan alternativas, cambios, adiciones o cual sugerencias concretas algunas con respecto al plan las cuales puedan ser transmitidas por el Consejo Regente a la corte."

El Juez William Frey de la Corte Federal por este Distrito ha advertido además que él quiere dar oído a los intereses de los padres de familia del distrito y especialmente a los que son afectados por cualquier plan de desegregación.

Dichos padres podrán, por medio de un portavoz o abogado de su grupo respectivo o individualmente, dirigirse a la corte por escrito. "Cualquier comentario por escrito que sea dirigido a la corte deberá fundarse en razón o ser constructivo en carácter y deberá incluir sugerencias o alternativas que expliquen cómo puedan mejorarse los planes," según la orden más reciente del juez.

Todos los comentarios deben ser firmados y enviados por correo o entregados personalmente a la siguiente dirección:

School Desegregation Plan
Clerk, United States District Court
U.S. Courthouse
55 East Broadway
Tucson, AZ 85701

El Juez Frey ha fijado una audiencia en su corte ubicada en la dirección mencionada para el martes, 8 de agosto, a partir de las 8:30 a.m. Las personas que quieran tomar la palabra en corte sesionada tendrán que incluir solicitud al respecto en sus comentarios presentados por escrito. Todos comentarios por escrito tendrán que ser entregados a no mas tarde que las 5 p.m. el viernes, 4 de agosto.

Los respondientes al caso tendrán que manifestar si tienen hijos que asistan a escuelas del TUSD y señalar las escuelas a las cuales sus hijos asistan. Personas que tomen la palabra en la audiencia deberán estar dispuestas a tomar juramento como testigos y disponerse a ser interrogados por abogados que representen intereses diversos.

El distrito escolar presentará su plan propuesto en la audiencia del 8 de agosto y los demandantes (los que iniciaron la demanda que resultó en la orden de desegregación) presentarán objeciones algunas que tengan al plan, o de igual manera, planes alternativos algunos que tengan que sugerir.

A integrantes del público se les permitirá tomar la palabra exigiéndoseles que se limiten a un máximo de 10 minutos por persona.

El Juez Frey ha dicho que primero escuchará a las personas que sean directamente afectadas por el plan de desegregación y que hayan hecho solicitudes, por escrito, de tomar la palabra y después a otros que hayan enviado comentarios por escrito. Si el tiempo lo permite, se les dará oportunidad de tomar la palabra a aquéllos que no hayan hecho solicitud de tomar la palabra.

El distrito recomienda la clausura de Spring

Aparentemente hay dos motivos que contribuyeron a que Safford se citara como escuela mereciente de remediación. Primero, después de la clausura de la intermedia Roskruge en 1972, algunos graduantes de Roosevelt fueron transportados a la intermedia Safford. Puesto que Roosevelt era vestigio de Dunbar, supuestamente estos estudiantes deberían haber sido asignados a otra escuela y no a Safford la cual ya tenía un número substancioso de matriculación negra.

En segundo lugar, en 1951, la área residencial de Dunbar se dividió entre Spring y Safford. La población estudiantil negra de Safford ha permanecido relativamente constante desde 1951. El efecto en Safford de la acción estatal que causó una concentración residencial negra alrededor de Dunbar no parece haber disminuido en el curso de los años.

Al recomendar la clausura de Spring, el distrito removería el último vestigio existente de Dunbar. La asignación de estudiantes del norte de la Speedway y del este del Santa Cruz removería a los estudiantes de Roosevelt en Safford y los asignaría a Doolen lo que la corte ha sugerido que se debería haber realizado en 1972. Esto contribuiría a mejorar la nivelación étnica en Doolen.

Alumnos anteriores de Spring del oeste del Santa Cruz asistirían a la intermedia Maxwell. Alumnos anteriores de Spring del sur de la Speedway y este del Santa Cruz y oeste de la Stone asistirían a la intermedia Safford.

Safford permanecería abierta hasta que se construyera una intermedia nueva destinada a servirles a las áreas de asistencia de Safford y Mansfeld. No se han fijado plazos con respecto a esta acción. Mientras tanto, la intermedia Safford se convertiría una escuela de reserva y atracción especial, lo que causaría estabilidad de matriculación.

Se espera que los padres de familia se involucrarían intensamente en la planificación y ubicación de la intermedia propuesta. Esta propuesta acción necesitaría ser aprobada por la corte.

De todas maneras, el plan propuesto por el distrito exige con que se cumpla con obligaciones legales y a la vez enfoque máximamente en las necesidades educativas de los niños afectados.

El juez hará la decisión final sobre todos los aspectos del plan que se ejecutará este otoño.

Judge, board to hear from parents

The Tucson Unified School District Board of Education has held several public forums to hear suggestions on how to comply with the court order to desegregate the nine schools identified in the order.

The board will continue to accept suggestions until its Aug. 4 deadline for submitting any changes to its proposed plan.

Accordingly, the board has scheduled a study session for 7:30 p.m. Monday, July 31, in its board room at 1010 E. 10th St., to permit those people involved in the schools affected by the court order "to present alternatives, changes, additions or any concrete suggestions to the plan which could be transmitted by the school board to the court."

U.S. District Court Judge William Frey has indicated that he wants to hear from parents in the district, particularly those directly affected by any desegregation plan.

These parents may, through a spokesman or attorney for their group, or individually, address the court in writing. "Any written comment addressed to the court should be reasoned and/or constructive in nature and should include suggestions or alternatives explaining how the plans may be improved," the judge's most recent order reads.

All comments should be signed and mailed or hand-delivered to:
School Desegregation Plan
Clerk, United States District Court
U.S. Courthouse
55 East Broadway
Tucson, Arizona 85701

Judge Frey has scheduled a hearing in his courtroom at the above address for 8:30 a.m. on Tuesday, Aug. 8. Those wishing to be heard in open court must include a request in their written comments. All written comments and requests must be received no later than 5 p.m. on Friday, Aug. 4.

Those responding must state whether they have children attending TUSD schools and which schools they attend. Those who speak at the hearing should be prepared to be sworn as witnesses and may be cross-examined by the attorneys on either side.

At the Aug. 8 hearing, the school district will present its proposed plan, and the plaintiffs (those who initiated the lawsuit which brought about the desegregation order) will present any objections they may have to the plan, as well as any alternative plans they may suggest.

Members of the public then will be permitted to speak, with a 10-minute time limitation on each speaker.

Judge Frey said he will hear first from those directly affected by the desegregation plan who have submitted written requests to speak, then from others who have submitted requests. If time permits, others who have not submitted written requests then will be permitted to speak.

Esta edición veraniega especial del Noticiero TUSD se está enviando por correo a todas las familias que tengan niños que asistan a escuelas del TUSD de acuerdo con la orden del juez de que se informen los residentes del contenido del plan propuesto.

Quien tenga preguntas acerca del plan o de la orden del juez puede dirigirlas a la oficina del Dr. Lee Starr, Subsuperintendente encargado de Servicios Comunitarios, 791-6121.

Información más detallada sobre el asunto de desegregación será incluida en la primera edición regular del Noticiero TUSD de 1978–79 la cual se publicará a mediados de septiembre.

TUSD News

Board of Education:
Mr. Soleng Tom, President
Dr. Mitchell Vavich, Clerk
Laura T. Almquist (Mrs. John)
Mr. Raul Grijalva
Helen Hafley (Mrs. Walter)

Superintendent of Schools:
Wilbur H. Lewis

Editor: Cheri Cross
Design: Dave Gurzenski
Translation: Modern and Classical Languages Department

1978–79 SCHOOL CALENDAR

Tues., Sept. 5	First day of classes
Fri., Nov. 3	Planning day No classes; End of First quarter
Fri., Nov. 10	Veterans' Day vacation
Thurs., Nov. 23 and Fri., Nov. 24	Thanksgiving vacation
Fri., Dec. 15	Last day of classes
Mon., Dec. 18 through Mon., Jan. 1	Winter vacation
Tues., Jan. 2	First day of classes
Wed., Jan. 24	Planning day No classes; End of Second quarter
Thurs., Feb. 22 Fri., Feb. 23	Rodeo vacation
Fri., March 30	Planning day No classes; End of Third quarter
Wed., April 11	Last day of classes

Viewpoint

Superintendent
Wilbur Lewis

For several years, the possibility of mandatory desegregation has hung over the Tucson Unified School District. Until June 5, no one knew if a desegregation order would be forthcoming, or what form any order would take.

On that date, U.S. District Judge William Frey issued the order involving only nine of the TUSD's 102 schools. In his order, the judge recognizes the popular feeling that every child should have an opportunity to go to a school in his own neighborhood, or to the nearest school with available space.

Understandably, any order that would involve a change in schools for any children would initially incur objections from many of those involved. The TUSD Board of Education held numerous public forums in the individual schools prior to submitting its proposed plan to the judge, and has continued to meet with parents to get more specific suggestions on how Judge Frey's mandate might be met.

The board may revise its proposed plan as late as Aug. 4.

Even if either side appeals the judge's ruling, a plan to correct what Judge Frey sees as Constitutional violations must be put into effect in those nine schools this fall.

In this special issue of the TUSD News, you may learn what the proposed plan is, how it relates to and corrects the judge's findings of Constitutional violations, and how to make known your own objections or suggestions for meeting the judge's mandate.

Por algunos años, la posibilidad de desegregación mandatoria ha existido sobre el Distrito Escolar Unificado de Tucsón. Hasta el 5 de junio, nadie sabía si la orden de desegregación vendría, o que forma tomaría dicha orden.

En esa fecha, el Juez William Frey del Distrito Federal expidió la orden incluyendo nada más 9 de las 102 escuelas del TUSD. En su orden, el juez reconoce el sentimiento popular de que cada niño(a) debe tener la oportunidad de asistir a una escuela en su propio vecindario; o a la escuela más cercana con cupo disponible.

Es de entenderse, que cualquier orden que se trate de un cambio en escuelas para cualquier niño(a) inicialmente contraería objeciones de los que son afectados. El Consejo Regente Escolar TUSD tuvo numerosos foros públicos en las diferentes escuelas antes de presentar el plan propuesto al juez, y ha continuado reuniéndose con los padres para obtener más